

February 7, 2003

VIA E-MAIL & US MAIL

Ms. Benetta M. Mansfield
Chief of Staff
National Mediation Board
Suite 250
1301 K Street, NW
Washington, DC 20005

Dear Ms Mansfield:

Re: Telephone Electronic Voting Comments

On September 30, 2002, the National Mediation Board (“NMB”) announced the implementation of Telephone Electronic Voting (“TEV”) in representation elections. Telephone Electronic Voting, 29 NMB 482 (2002). In the announcement, the Board invited parties to file comments regarding TEV. On behalf of our twenty US airline members, the Airline Industrial Relations Conference (“AIR CON”) respectfully offers the following comments.

I. SHORTEN THE MINIMUM ELECTION VOTING PERIOD TO 21 DAYS.

In mail ballot elections, the NMB has traditionally set a minimum voting period of 28 days after the ballot package had been mailed to the eligible employees. See Representation Manual section 14.202. In part, the 28 days voting period provided time for the United States Postal Service (“USPS”) to deliver the ballot from the voter back to the NMB. Given the fact that many NMB representation elections involve a nationwide electorate, it is a reasonable inference that approximately one week of the 28 day voting period was attributable to the USPS return period after the voter dropped his/her ballot into a mailbox.

With the introduction of TEV, there is no longer a need to build extra days for ballot return into the voting period. A voter’s ballot is now received by

the NMB at the same instant the vote is cast. Voters can cast their ballots until the moment before the ballot count begins at 2 p.m. Accordingly, AIR Conference would respectfully request that the Board amend Representation Manual section 20.201 to reduce the minimum voting period in TEV elections to 21 days after the ballot package is mailed.

II. **DEVISE AN ALTERNATIVE PERSONAL IDENTIFICATION NUMBER (“PIN”) SYTEM.**

The integrity of the TEV system relies upon the use of the Voter Identification Number (“VIN”) in conjunction with the Personal Identification Number (“PIN”). The VIN is a randomly generated six digit number that is provided to the voter in the ballot package. The PIN is composed of the last four digits of the voter’s Social Security number.

The NMB adopted the combined VIN and PIN system to “ensure the confidentiality and integrity of the election by eliminating unauthorized votes.” Representation Manual section 13.204. As envisioned, the combined VIN and PIN system would dissuade anyone from intercepting ballot packages. Even with a fraudulently obtained VIN, the intercepting party could still not cast a valid ballot without knowing the last four digits of the voter’s Social Security number. To further reduce the likelihood of unauthorized use of the PIN, the NMB instructs carriers not to include any portion of the Social Security number on the copy of the eligibility list that is sent to the union prior to the election.

However, the confidentiality of the PIN system is seriously eroded by section 3.1 of the Representation Manual which strongly encourages, if not directs, unions to obtain the employee’s PIN when the worker signs an authorization card:

“If the carrier does not utilize employee identification numbers, the authorization should include the last four digits of the employee’s social security number.” (emphasis supplied)

The inherent tension between Representation Manual sections 3.1 and 13.204 is inescapable. Having authorized union organizers to obtain the PIN in the early stages of the representation dispute, the Board then seeks to restore the PIN’s confidentiality. However, what has already been disclosed cannot later be recaptured and made secret.

Accordingly, AIR CON would urge the NMB to adopt an alternative PIN system. Without seeking to prejudge the issue, we anticipate significant problems with any PIN that utilizes all or part of the Social Security number. Based on some informal inquiries, it appears that portions of the Social Security number are used internally by many carriers for a variety of purposes, e.g. as part of their job bidding systems. It is also our informal understanding that some unions utilize Social Security numbers in their records of members, which would nullify the confidentiality of Social Security based PINs in representation elections involving another union challenging the incumbent representative.

Utilizing an employee's date of birth or date of hire as a PIN also suffers from confidentiality shortcomings. At a number of airlines, those are either casually known by co-workers or are routinely utilized in the bidding or seniority processes.

In AIR CON's estimation, the only secure PIN system would entail a "Second VIN." This would be a randomly generated sequence of numbers produced by the NMB and mailed out to voters in a second mailing a day or two after the ballot package is sent. This "Second VIN" mailing would be similar to the security process utilized by many credit card companies to prevent theft. The credit card company first mails the new credit card to the cardholder and subsequently sends out a confirmatory letter to the cardholder to ensure the card was received. However, before adopting any alternative PIN system, AIR CON would recommend that the Board reopen the record for further comments.

III. **ADD A "NO UNION" INSTRUCTION.**

In the representation election for America West, 30 NMB 78 (2002), the Board counted four "silent" write-in calls as valid votes for any other organization. AIR CON has serious reservations about interpreting a "silent" call (or "blank" ballot) as a vote in favor of unionization. An equally plausible interpretation is that the "silent" caller was an employee who, unfamiliar with their first time use of the TEV system, continued moving through the TEV commands looking for a prompt to vote "no union," and ultimately entered the write-in port in the mistaken hope that a "no union" option or prompt would be available there.

Accordingly, AIR Conference recommends that the NMB add an additional Instruction to inform callers that if they oppose union representation, they should immediately "hang up" the phone.

Respectfully submitted,

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Robert J. DeLucia
Vice President, General Counsel &
Treasurer
Airline Industrial Relations Conference